

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

APR 30 2008

JOHN F. CORCORAN, CLERK
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ROBERT STEVEN JOYCE,)	
Plaintiff,)	Civil Action No. 7:08cv00300
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
RANDY SMITH,)	By: Samuel G. Wilson
Defendant.)	United States District Judge

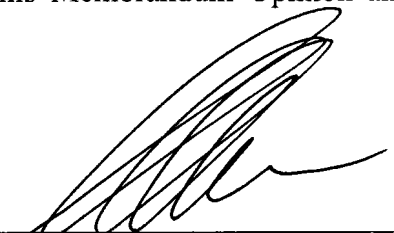
Plaintiff Robert Steven Joyce, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. As Joyce has not submitted the necessary \$350.00 filing fee for a civil action, the court will also construe his pleading as a request to proceed in forma pauperis and deny that request.

According to court records, the court has dismissed at least three of Joyce's previous civil rights complaints on the grounds that they were frivolous, malicious, or failed to state a claim.¹ Therefore, Joyce may not proceed with this action unless he either pays the \$350.00 filing fee or shows that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

As Joyce has neither prepaid the filing fee nor demonstrated that he is "under imminent danger of serious physical injury,"² the court dismisses his complaint without prejudice.

The Clerk is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to the plaintiff.

ENTER: This 30th day of April, 2008.



United States District Judge

¹ See Joyce v. Cassel, et al., Civil Action No. 7:03cv00353 (W.D. Va. Nov. 17, 2003) (dismissed pursuant to 28 U.S.C. § 1915(e)(2)(b)); Joyce v. Thomas, Civil Action No. 7:07cv00198 (W.D. Va. May 14, 2007) (dismissed for failure to state a claim); Joyce v. Thomas, Civil Action No. 7:07cv00447 (W.D. Va. Sep. 24, 2007) (dismissed pursuant to 28 U.S.C. § 1915A(b)(1)).

² Joyce alleges that defendant Smith, an Assistant Commonwealth's Attorney for Henry County, "knowingly us[ed] false information to incriminate [Joyce]" because two witnesses who testified at Joyce's trial on a malicious wounding charge allegedly gave conflicting testimony at the preliminary hearing and at his trial. The court finds that Joyce's allegations do not demonstrate that he is under imminent danger of serious physical harm.